

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 May 2025

DOCKET NUMBER: AR20240010740

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions characterization of service.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 23 July 2024
- Self-authored statement, 23 July 2024

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he enlisted in the U.S. Army at seventeen years old and completed basic training at Fort Lewis, WA. He volunteered for Vietnam but was initially denied due to his age. He later served in Germany and brought his wife to join him overseas. Eventually ordered to deploy to Vietnam, he attempted to get an extension to delay his deployment due to his wife's pregnancy but was denied. Influenced by the protest and anti-war sentiment of the time, he made the decision to refuse deployment, a choice he has regretted for decades.
3. A review of the applicant's record shows:
 - a. He enlisted in the Regular Army on 11 February 1969 and subsequently reenlisted on 15 November 1969.
 - b. Headquarters, U.S. Army Personnel Center, Summary Court-Martial Order Number 113, 18 January 1971, shows the applicant was convicted by a summary court-martial, in that he did, on or about 22 December 1970, without authority, absent himself from his unit, and did remain so absent until on or about 16 January 1971.

(1) His sentence, adjudged on 18 January 1971, included forfeiture of \$75.00 per month for one month and reduction to the rank/grade of private/E-1.

(2) On 18 January 1971, the sentence was approved and ordered executed.

c. On 22 September 1971, the following court-martial charge was preferred against the applicant: one specification of violation of Article 86 (Absent Without Leave (AWOL)), in that he did, or about 3 February 1971, absent himself from his unit and did remain absent until 21 September 1971.

d. On 28 September 1971, the applicant voluntarily requested discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10. The applicant acknowledged that he made the request of his own free will and was not coerced by any person. He understood that if the request was accepted, he could be discharged under other than honorable conditions and furnished an undesirable discharge certificate. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veteran's Administration, he could be deprived of his rights and benefits as a veteran under both Federal and State law and encounter substantial prejudice in civilian life because of an under other than honorable discharge.

(1) He acknowledged he was afforded the opportunity to consult with appointed counsel, or military counsel.

(2) He elected to submit a statement on his own behalf wherein he stated, in effect, he served approximately twenty months honorably but also had eleven months of AWOL time. He received a summary court-martial for being AWOL for a period of ten months from his unit and was pending charges for another period of AWOL. He expressed dissatisfaction with the Army's treatment of him and his family and, without a discharge, he would continue going AWOL.

e. On 5 October 1971, his immediate commander recommended approval of the applicant's request for discharge under the provisions of AR 635-200, chapter 10, and recommended he be issued an undesirable discharge certificate.

f. On 8 October 1971, his intermediate commander recommended approval of the applicant's request for discharge under the provisions of AR 635-200, chapter 10, and recommended he be issued an undesirable discharge.

g. On the same day, the separation authority approved the recommended discharge, under the provisions of AR 635-200, chapter 10, and directed the applicant

be reduced to the lowest enlisted grade and be issued an undesirable discharge certificate.

h. His DD Form 214 (Armed Forces of the United States Report of Transfer of Discharge) shows he was discharged in the rank/grade of private/E-1 on 8 October 1971, under the provisions of Army Regulation 635-200, chapter 10. He completed 1 year, 1 month, and 21 days of net active service with lost time from 28 December 1970 to 25 January 1971, from 3 February 1971 to 20 September 1971, and from 22 September 1971 to 8 October 1971. His service was characterized as under other than honorable conditions. He was issued the separation program number "246" and the reenlistment code "RE-3B, and 4". Item 24 (Decorations, Medals, Badges, Commendations, Citation and Campaign Ribbons Awarded or Authorized), does not list any awards or decorations.

i. On 27 March 1984, the Army Discharge Review Board notified the applicant that it was determined that he was properly and equitably discharged and his request for a change in the character and/or reason of his discharge was denied.

4. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

5. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation and the lack of any mitigation evidence presented by the applicant for such misconduct, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's discharge characterization.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

//SIGNED//

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CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 10 provided that a Soldier who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be

submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

e. When a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade.

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance

does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//